

Message Text

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ORIGIN ARA-06

INFO OCT-01 SS-14 ISO-00 AS-01 SP-02 TRSE-00 NSC-05 NSCE-00

INR-05 OMB-01 L-01 EB-03 CIAE-00 /039 R

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DESIRED DISTRIBUTION

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C O N F I D E N T I A L STATE 031163

LIMDIS

E.O. 11652: GDS

TAGS: EIND, BDIS, EINV, PFOR, PE

SUBJECT: MARCONA - TECHNICAL COMMISSION MEETING MORNING
OF JANUARY 29

1. DISCUSSIONS AT TECHNICAL LEVEL MEETING HELD
MORNING OF JANUARY 29 CENTERED ON 4 COMMISSION ISSUE
AND DEPLETION CASE. SPEAKING TO 4 ALLOWANCE ISSUE,
FISHLOW MADE CLEAR THAT TO QUESTION EITHER LEGAL OR
ECONOMIC BASIS OF THE 4 RATE WAS NOT ONLY IMPROPER,
BUT COULD NOT HAVE EFFECT OF REDUCING COMPENSATION.
FISHLOW REVIEWED LEGAL BASIS ON WHICH 4 RATE ESTABLISHED,
NATURE OF IRON ORE MARKET, THE ISSUE OF TRANSFER PRICING,
AND THE RELATIONSHIP BETWEEN INCIDENCE OF ADDITIONAL IN-
COME TO THE COMPANY AND ITS IMPLICATION FOR THE EVALUATION
OF THE COMPANY. HE OBSERVED THAT IRS HAD REVIEWED
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MARCONA'S ALLOCATION OF INCOME AMONG SUBSIDIARIES IN 1968-

71 AND HAD MADE NO CHANGES. HE POINTED OUT THAT USG AND GOP HAD ESSENTIALLY THE SAME INTERESTS IN THIS TRANSFER PRICING MATTER, SINCE MARCONA MINING - IN CONTRAST TO OTHER SUBSIDIARIES - IS A US CORPORATION. FINALLY, FISHLOW INDICATED THAT IF MARCONA'S GROSS INCOME WERE RAISED BY DISALLOWANCE OF THE 4 ALLOWANCE, THE INCREASE WOULD BE

A SUBSTANTIAL (E.G., 51 MILLION) INCREASE IN GOING CONCERN VALUE. GOP DID NOT RESPOND.

2. USG TEAM THEN REVIEWED BRIEFLY DEPLETION TAX CASE, DRAWING ON PREVIOUS INFORMATION WE ALREADY SUBMITTED TO THE PERUVIANS. GANTZ EMPHASIZED TREATMENT BY GOP OF MARCONA AS CONCESSIONAIRE UNDER MINING CODE FOR MANY YEARS, FACT THAT DEPLETION BENEFITS ONLY PART OF PACKAGE OF BENEFITS AND OBLIGATIONS ESTABLISHED FOR CONCESSIONAIRES UNDER THE CODE. BROUSSET RESPONDED BY STATING THAT IN EFFECT DEPLETION CASE IS A CLOSED ISSUE, SINCE THE PERUVIAN SUPREME COURT HAD IN FACT DECIDED THAT MARCONA'S CONCESSION WAS A SPECIAL CONCESSION AND THAT THEREFORE THE STANDARD DEPLETION RATE GIVEN TO REGULAR CONCESSIONAIRES DID NOT APPLY. PERUVIANS ALSO MADE SEVERAL OTHER HISTORICAL ARGUMENTS TO EFFECT THAT UTAH DID NOT HAVE RIGHT TO TRANSFER THE DEPLETION RIGHTS IT ORIGINALLY RECEIVED FROM SANTA TO MARCONA. ESSENCE OF PERUVIAN PRESENTATION, BOTH FROM HISTORICAL AND LEGAL POINTS OF VIEW WAS THAT DEPLETION CASE IS A CLOSED ISSUE, AND THAT ONLY RECOURSE FOR MARCONA IS THROUGH PERUVIAN COURTS. US GROUP NOTED GOP POSITION, INDICATED BRIEFLY ITS UNWILLINGNESS TO CONCEDE ISSUES.

3. FISHLOW THEN SUMMARIZED TECHNICAL DISCUSSIONS IN THE FOLLOWING POINTS: (A) USG SIDE HAD DISCUSSED TAX DEBT ISSUES AT LENGTH SO THAT ALL ELEMENTS COULD BE CLEARLY PRESENTED AND SO THAT WE COULD AVOID NEW ISSUES ARISING AT LAST MINUTE; (B) ONLY SIX WEEKS REMAIN BEFORE WE MUST REACH A FINAL SETTLEMENT ON AMOUNT OF COMPENSATION WHICH NECESSARILY INCLUDES EVALUATION OF ASSETS AND DEBTS; (C) WHILE AT TIMES THERE HAS BEEN A LACK OF A CLEAR UNDERSTANDING OF FULL IMPLICATIONS OF PERUVIAN TAX LAW, ONCE

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ALL FACTS ARE KNOWN IT SHOULD BE POSSIBLE TO RECONCILE THE NEW INFORMATION WE ARE PROVIDING AND THE PREVIOUS CLAIMS; (C) GIVEN NATURE OF 4 COMMISSION ISSUE AND FULL REVIEW BY USG OF MARCONA'S COMMISSION RATES IN EARLIER YEARS, IT IS CLEAR THAT BOTH THE SUM OF MONEY INVOLVED AND THE NATURE OF THE LOGIC EMPLOYED TO REACH THE SPECIFIC FIGURE INVOLVES THE INTEREST OF UST; (D) ONE SHOULD DIFFERENTIATE BETWEEN VARIOUS TAX CLAIMS AND DEBTS

OWED BY MARCONA AS A MINING ENTERPRISE; DISCUSSIONS OF THE PHYSICAL AND ECONOMIC EXPLOITATION OF THE MINE ALL DEALT WITH QUESTIONS OF JUDGMENT, OF HONEST DECISIONS WHICH AROSE IN THE COURSE OF RUNNING A BUSINESS. THESE KIND OF PROBLEMS TEND TO RAISE VERY VEXING PROBLEMS OF EVALUATION; IF WE ENTER INTO THEM, THE LOGICAL CONSEQUENCE WOULD BE A SHIFT TO A REPLACEMENT VALUE STANDARD; (E) WE DESIRE TO RESOLVE PROBLEMS, NOT TO TAKE NEW NEGOTIATING

STANCES; (F) FINALLY, WE HAVE FULLY DISCUSSED TECHNICAL QUESTIONS AND LATER IN THE AFTERNOON SHOULD MOVE TO CONSIDERATION OF IMPORTANT BASIC QUESTIONS OF OVERALL VALUE OF THE PROPERTY.

4. MARCHAND CLOSED MEETING BY NOTING CONSTRUCTIVE SPIRIT DEMONSTRATED BY BOTH SIDES TO FIND A SOLUTION AND EXPRESSED HOPE THAT FURTHER DISCUSSIONS WOULD LEAVE TO A CONVERGENCE OF OPINIONS.

5. COMMENT: PERUVIANS HAD NO RESPONSE AT THIS MEETING TO OUR PRESENTATION ON VITAL 4 COMMISSION ISSUE, ALTHOUGH IT IS CLEAR THEY ARE NOT PREPARED TO ABANDON THEIR POSITION ON THE DEPLETION ALLOWANCE. RELATIVELY MINOR MATTER OF DOCK DEPRECIATION LEFT ASIDE, AS GOP HAD NOT RAISED IT FORMALLY. FURTHER DISCUSSIONS OF 4 COMMISSION ISSUE BY GOP LIKELY IN FINAL COMMISSION MEETING SCHEDULED FOR AFTERNOON OF JANUARY 29. INGERSOLL

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Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TECHNICAL ASSISTANCE, NEGOTIATIONS, MEETING PROCEEDINGS, PRICE FIXING
Control Number: n/a
Copy: SINGLE
Draft Date: 09 FEB 1976
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: powellba
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE031163
Document Source: CORE
Document Unique ID: 00
Drafter: GAMUNROE
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760048-1135
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760267/aaaachac.tel
Line Count: 142
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN ARA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: LIMDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: LIMDIS
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: powellba
Review Comment: n/a
Review Content Flags:
Review Date: 21 JUL 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <21 JUL 2004 by ShawDG>; APPROVED <29 OCT 2004 by powellba>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: MARCONA - TECHNICAL COMMISSION MEETING MORNING OF JANUARY 29
TAGS: EIND, BDIS, EINV, PFOR, PE
To: LIMA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006